

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

COMSAT CORPORATION)
)

Petition for Partial Waiver of the Universal)
Service Contribution Requirement contained)
In Section 54.703 of the Commission's Rules)
)
_____)

CC Docket 96-45

COMMENTS OF TELEGLOBE USA INC.

Telelobe USA Inc.¹ (Telelobe) supports COMSAT's Petition for Partial Waiver² (Petition) to the extent that it would establish generic relief applicable to all carriers for whom Universal Service Fund³ (USF) contributions exceed their revenues from interstate services. At the same time, COMSAT's explanation for its minimal interstate revenues -- that it has been excluded from the US domestic market -- is irrelevant to the relief it seeks. The key factor is

¹ Telelobe is a U.S. international common carrier which has provided carrier's carrier services since July 1996 and which began offering switched services to end users in 1997. Telelobe's end user services include high volume corporate customers taking service on a dedicated access basis and residential switched access customers using Feature Group D and 800 access. Telelobe also provides international broadcast transmission services to television network and other users. Telelobe's ultimate corporate parent is Telelobe Inc., based in Montreal, Quebec, and it is affiliated with Telelobe Canada Inc., the Canadian intercontinental carrier.

² DA 98-185, Public Notice released January 30, 1998.

³ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 12 FCC Rcd. 8776, *et al.*, *appeals pending sub nom Texas Office of Public Utility Counsel v. FCC*, Civ. No. 97-60421 (5th Cir.).

whether it is “equitable and nondiscriminatory” for the burden of USF support to fall so heavily on carriers with insignificant amounts of interstate revenue. In that regard, Teleglobe agrees with COMSAT.

I. COMSAT’S PETITION ILLUSTRATES A MAJOR INEQUITY IN THE USF CONTRIBUTION POLICY

The essence of COMSAT’s Petition is that while it received \$3.8 million in 1997 interstate revenues, its 1998 Universal Service Fund liability (which is based on combined interstate, intrastate, and international revenues) will be nearly \$5 million. COMSAT characterizes this result as a “manifestly arbitrary and irrational result, plainly contrary to the intent of the Act or the Universal Service Order.”⁴ COMSAT also notes that it would not have begun providing its interstate services if it had known that it would generate liabilities in excess of those revenues,⁵ which total less than one percent of the company’s annual revenues. This disproportionately small amount of business “triggers Universal Service liability for the remaining ninety-nine plus percent of COMSAT’s business that is actually international.”⁶

COMSAT has identified a fundamental inequity in the Universal Service Fund contribution policy -- the amount of qualifying interstate revenue bears no relation

⁴ Petition at 7.

⁵ Id.

⁶ Id. COMSAT also notes that more than ninety percent of its interstate revenues is provided to other contributors, and therefore exempt from contribution payments.

whatever to the level of total revenue which then becomes subject to contribution. A single dollar of interstate revenues will subject the entire international revenues of any carrier -- including COMSAT -- to contribution liability, without limit or exception. Moreover, the Commission's *de minimis* policy, as modified on reconsideration,⁷ only exempts carriers whose total USF contribution is less than \$10,000, but once again without regard to the jurisdiction of the underlying revenues. A carrier with more than \$250,000 in interstate revenues will therefore be entirely exempt from contribution, while another carrier which has received only \$1 in interstate revenue will see its entire international revenue base open to liability, *ad infinitum*.

Congress did not anticipate this skewed approach. First, it was not Congress' intention to impose any liability on international carriers. The fact that an international carrier has an insignificant amount of interstate revenue may not negate a statutory exemption.⁸ Second, Sec. 254(d) requires that the Commission distribute the burden of contribution on an "equitable and nondiscriminatory basis" among interstate service providers. Ignoring any relation between USF liability and the quantity of interstate traffic carried -- on either an actual basis or relative to international revenues -- works a fundamental inequity and discriminates against carriers that provide *de minimis* levels of interstate service.

⁷ Fourth Order On Reconsideration, CC Docket No. 96-45, FCC 97-428 paras. 293-298 (Released December 30, 1997).

⁸ In enacting Section 254(d) of the Telecommunications Act of 1996, the Conference Committee expressly removed language from the Senate version of the bill which would have required USF contribution by international carriers. S. 652, Sec. 254 (d).

II. COMSAT HAS NOT ESTABLISHED THAT ITS CIRCUMSTANCES ARE UNIQUE AS REGARDS USF CONTRIBUTION

Teleglobe disagrees with COMSAT's assertion that its status as an interstate carrier is so unusual that the Commission must grant it a special and unique USF exemption.⁹ Many US carriers, including Teleglobe, focus their efforts on selling international-only services. As such, the effect of *sui generis* relief extended to COMSAT would provide it with a price advantage in the US broadcast services market, among others, which would be denied other carriers exhibiting exactly the same domestic-international revenue mix.

COMSAT states that "the great majority" of its jurisdictionally interstate revenues derive from services provided between the US and Guam, the Commonwealth of the Northern Marianas, American Samoa, and other U.S. possessions. It also provides certain INMARSAT services in the U.S. Nonetheless, COMSAT claims that it is expressly excluded from the US domestic market. This assertion is belied by the facts, however, since the Communications Act, defines interstate communications as being to and from "any State, Territory, or possession of the United States."¹⁰

Moreover, there is nothing in the Act which excludes territories and possessions of the U.S. from participation in the universal service programs. The fact that COMSAT's interstate carrier status stems from service on these routes is therefore no basis upon which to construct an exemption., COMSAT has also failed to establish that it is under a legal compulsion to serve these routes or to provide its INMARSAT services. If it withdrew from providing these services

⁹ Petition at 4-6.

¹⁰ 47 U.S.C. Sec. 3(22).

it would no longer have interstate revenues and therefore no USF obligation.¹¹ As such, the Commission should reject this argument as the basis of *sui generis* relief for COMSAT.

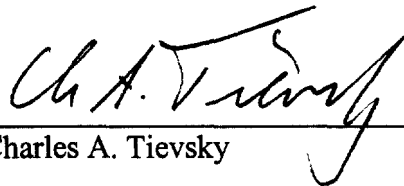
III. CONCLUSION

Teleglobe supports COMSAT's Petition to the extent that it would establish generic relief applicable to all carriers for whom USF contributions exceed their revenues from interstate services.

Respectfully submitted,

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¹¹ COMSAT has not demonstrated that a separate satellite system would not be willing or able to serve these routes, or whether it has explored whether other carriers would be interested in serving the routes using other INTELSAT signatories.

Service List

I, Terri Preeg, hereby certify that this 11 day of February, 1998, copies of the preceding document were mailed, first class postage prepaid, or hand delivered, as indicated, to the persons listed below.

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